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SERVICE DATE – FEBRUARY 5, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC.–ABANDONMENT EXEMPTION–
IN LAS ANIMAS COUNTY, CO

STB Finance Docket No. 34087¹

TRINIDAD RAILWAY, INC.–LEASE AND OPERATION EXEMPTION–
KERN VALLEY RAILROAD COMPANY

Decided: February 4, 2002

This decision denies an appeal of the order of the Board, Chairman Morgan, served on January 15, 2002 (January 2002 Order). The January 2002 Order denied a petition to stay the effect of a previous order of this agency requiring Kern Valley Railroad Company (Kern Valley) to disclose certain information to Rail Ventures, Inc. (Rail Ventures) and to allow the latter access to the subject rail line.

BACKGROUND²

In a decision served December 12, 2001 (December 2001 Order), the Board, inter alia, denied Kern Valley's petition for reconsideration of an earlier decision in these proceedings and ordered Kern Valley, by January 21, 2002, to: (1) disclose to Rail Ventures the purchase price Kern Valley paid for the line; and (2) grant Rail Ventures access to the line to inspect it.

By a petition filed on December 21, 2001, Kern Valley asked the Board to stay its December 2001 Order, pending Board action on another petition for reconsideration filed by

¹ These proceedings are not consolidated; a single decision is being issued for administrative convenience.

² The lengthy and complicated procedural history of these proceedings is discussed more fully in the January 2002 Order and is incorporated by reference.

Kern Valley on December 28, 2001.³ Rail Ventures replied in opposition. In its January 2002 Order, the Board denied the petition for stay but granted a protective order covering information regarding the purchase price.

Kern Valley then filed an appeal of the January 2002 Order, alleging that it contravened the agency's regulations, was contrary to Board precedent, and manifested egregious prejudicial error. In its reply, Rail Ventures requests that the Board enforce its December 2001 Order.

DISCUSSION AND CONCLUSIONS

The January 2002 Order found that Kern Valley had failed to demonstrate on the record that it would be irreparably harmed absent a stay. Therefore, the stay petition was denied, but a protective order was issued to address Kern Valley's assertion that the purchase price is commercially sensitive information.

Kern Valley's appeal rehashes substantive arguments either previously made or presented in its petition for reconsideration currently under review. But the appeal does not even attempt to show how Kern Valley would be irreparably harmed when it provides the information, subject to the protective order, and when it allows Rail Ventures to inspect the line. Thus, Kern Valley has not shown that the January 2002 Order was in error or contrary to rule or precedent.

Kern Valley is in violation of the Board's orders in this proceeding, which were issued to facilitate our processes under the Offer of Financial Assistance (OFA) provisions of 49 U.S.C. 10904. Kern Valley acknowledged, when it sought authority to acquire the line during the pendency of the abandonment and OFA process, that it would be subject to these OFA procedures. Accordingly, Kern Valley must immediately comply with the December 2001 Order, as modified by the January 2002 Order.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Kern Valley's appeal is denied.
2. Kern Valley shall immediately afford Rail Ventures access to the rail line and shall immediately provide to Rail Ventures, under the protective order, a written document revealing the purchase price.

³ We will rule on the petition for reconsideration in a future decision.

3. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary